

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6894 of 1985

with

SPECIAL CIVIL APPLICATION No 6877 of 1985

with

SPECIAL CIVIL APPLICATION No 5059 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD EDUCATION SOCIETY & ORS.

Versus

BHASKERBHAI M DESAI & ORS.

Appearance:

1. Special Civil Application No. 6894 of 1985 & 6877 of 1985
MS VASUBEN P SHAH, Sr.Advocate with
instructing counsel MS KALPANA BRAHMBHATT for Petitioners
None present for Respondent No. 1
MR SM MAZGAONKER for Respondent No. 2
MR HL JANI for Respondent No. 3
2. Special Civil ApplicationNo 5059 of 1986
MR KS SHUKLA for Petitioners
MR HL JANI for Respondent No. 1 & 2
MR SM MAZGAONKER for Respondent No. 3
None present for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/96

ORAL JUDGMENT

Heard learned counsel for the parties. All these three matters are proceeding on the common facts and grounds and as such, the same are being disposed of by this common order.

Special Civil Application No.6894 of 1985:

2. The petitioner, the Ahmedabad Education Society, runs M.G. Science College at Ahmedabad. The respondent No.1 was a professor in the M.G. Science College. Under the Circular of the University, the academic session was divided into two parts, one ending on 31st October of the relevant year and the second ending on 14th June of the year concerned. It has also been provided in the said Circular that if a teacher attains the age of superannuation earlier to 31st October of the year concerned, then he shall be retired from 31st October of that year and if he attains the age of superannuation after 31st October of the concerned year, then he shall be retired on 14th June of the said year. So the respondent No.1 was entitled to continue in service till 31st October 1985. The institution was receiving grant-in-aid and as such the respondent No.3 has to give grant to the petitioner for salary of the respondent No.1 for the period ending 31st October 1985 which was not given and this action of the respondent No.3 led to filing of this petition by the petitioner before this Court. This Court has made an order on 3rd February 1986 under which interim relief in terms of para 5(c) of the petition was granted with a condition that in the event of the petitioner losing the petition, they would be reimbursing the respondent No.3 for the said amount. So there is no dispute that the respondent No.3 has paid grant to the petitioner for salary of the respondent No.1 for the period ending 31st October 1985.

Special Civil Application No.6877 of 1985:

3. The petitioner, the Ahmedabad Education Society, which runs M.G. Science College at Ahmedabad. The respondent No.1 was initially appointed as a Demonstrator in the M.G. Science College and thereafter continued as a Professor in the said college. The respondent No.1 was to retire on attaining the age of superannuation on 30th November 1985 and as per the University ordinance, she has to continue in the service upto 14th June 1986. The respondent-State was under

obligation to make grant of salary of the respondent No.3 till the period ending 14th June 1986 but that has not been given which led to filing of this petition by the petitioner before this Court. This Court, on 5th February 1986, has passed the order granting therein interim relief in terms of para 6(c) of the petition on condition that in the event of the petitioner losing the petition, they would be reimbursing the respondent No.3 for the said amount.

Special Civil Application No.5059 of 1986:

4. The petitioner, the Gujarat Law Society, runs B.D. Arts College at Ahmedabad and the respondent No.1 was a teacher therein. The respondent No.4 has attained the age of superannuation on 9th August 1986 and as such, as per the University Resolution, he could have been continued upto 31st October 1986 in the service of the college and the petitioner was entitled for grant in respect of salary of that teacher, for the period ending on 31st October 1986. That grant was not given which led to filing of petition before this Court. On 20th October 1986, this Court has made an order granting interim relief in terms of para 21(d) of the petition on the condition that in the event of the petitioner losing the petition, they would be reimbursing to the respondent No.3 for the said amount. So in this case also, the amount has been paid of the grant of salary of the respondent-teacher for the period ending 31st October 1986.

5. The learned counsel for the petitioners contended that the Resolution of the University should have been given effect to in the cases of teachers in the private colleges receiving grant-in-aid from the Government. The Resolution of the University provides for University teachers but in the matter of retirement of a teacher whether the teacher is of the University or of the Government college or private aided colleges, there should not be discrimination in the matter of retirement. The learned counsel for the petitioners produced on record the Government Resolution dated 11th December 1990 under which now the provision has been made that a teacher who attains the age of superannuation in the first session will continue in service till 31st October of the said year and who attains age of superannuation in the second term will continue in service till 14th June of that year. So, the petitioner's counsel contended that now the intention of the Government is also clear that the date of retirement of the teachers should be 31st October of the concerned year in which he attains age of superannuation or 14th June of the year as the

case may be. On the other hand, the learned counsel for the respondent-State, though admitted the Resolution of the Government dated 11th December 1990, but his contention is that it is not retrospective in operation.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The teachers are the persons concerned with teaching the students and it is a matter of utmost importance that due to retirement of a teacher the studies of the students may not suffer. In case before completion of the academic session or term, a teacher retires on he reaches the age of superannuation, certainly it will affect teaching of the students. A new teacher who comes to teach students in his place for the concerned subject will take some reasonable time to settle which may adversely affect teaching programme and consequential result thereof, the result of the examinations. Keeping in view this broader aspect of the matter, the University has decided the date of retirement of the teacher other than the date on which they attain the age of superannuation, though the age of superannuation has been attained earlier to the date which has been fixed for retirement for a teacher. This has a reasonable nexus with the objects sought to be achieved and it cannot be said to be giving of some benefits to the teachers but it has object and that is very important object, i.e. the interest of the students. The dominate consideration in these matters is that at no point of time, the teaching programme and the studies of the students should be suffered. The retirement of a teacher in middle of the term or academic year certainly has a strong bearing on the interest of students, which, as stated earlier, is of predominant consideration. Taking into consideration this larger issue of the interest of students, the University has rightly resolved to continue the services of the teachers upto a particular period after attaining the age of superannuation and that is very reasonable decision taken in the interest of students. It cannot be said to be arbitrary and unjustified decision of the University. It is true that any decision taken by the University may not ipso-facto apply to the service conditions of the teachers who are working in the private aided colleges or Government colleges, but the action of the respondent-State not to extent the same benefits to this class of persons is difficult to understand. The colleges are affiliated to the Universities and the teaching programme in the colleges are as prescribed by the University concerned. A student who is at a

University or at a college, has same academic year or term and in case the teachers at the aided colleges are allowed to retire in mid of academic session or term as the case may be it will adversely effect the students as well as it will put an institution in difficulty also. It is not easy to get a teacher in a subject concerned immediately and that too for a short term. Apart from this, it is always in the larger interest of students that the very teacher who started teaching them the subject concerned, completes the studies for that term or academic year, as the case may be, and to fulfil this object, it is just and reasonable and in the larger interest of the students to give legal fiction to extend the date of retirement of a teacher beyond actual date of superannuation. The action of the respondent-State not to provide grant to the petitioners institutions for the teacher to be worked till the date fixed for retirement from the date of actual retirement, is arbitrary and illegal and it cannot be allowed to stand. In view of the interim orders, the petitioners have received interim reliefs as prayed for, and as such, no positive direction is required to be given. Moreover, now the Government itself has made necessary provision in this respect and as such no further direction is also to be given to the Government.

8. In the result, these Special Civil Applications are allowed and it is hereby declared that the respondent teachers therein in these petitions are entitled for the salary for extended date of retirement beyond actual date of superannuation with reference to the term or academic year and the State Government is under legal obligation to provide the grant to the petitioner institutions for making payment of salaries to these teachers for the aforesaid period. Rule is made absolute in aforesaid terms. As the petitioners have succeeded in these petitions, they are not required to reimburse the amount which they have received towards the grant of payment of salaries to the teachers in these petitions. No order as to costs.

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